

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

THE COMMONWEALTH OF
MASSACHUSETTS,

Plaintiff,

and

AQUINNAH/GAY HEAD
COMMUNITY ASSOCIATION, INC.
(AGHCA) and TOWN OF AQUINNAH,

*Intervenor-Plaintiffs/Counterclaim-
Defendants,*

vs.

THE WAMPANOAG TRIBE OF GAY
HEAD (AQUINNAH), THE
WAMPANOAG TRIBAL COUNCIL OF
GAY HEAD, INC., and THE
AQUINNAH WAMPANOAG GAMING
CORPORATION,

Defendants/Counterclaim-Plaintiffs,

and

CHARLIE BAKER, in his official
capacity as GOVERNOR,
COMMONWEALTH OF
MASSACHUSETTS, et al.,

Third-Party Defendants.

CASE NO: 1:13-cv-13286-FDS

[Formerly Supreme Judicial Court for Suffolk
County, Massachusetts, CIVIL ACTION NO.
2013-0479]

Hearing Date: May 20, 2019

Place: Courtroom 2

Time: 11:00 a.m.

**HONORABLE JUDGE F. DENNIS
SAYLOR IV**

**WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH)'S RESPONSE IN
OPPOSITION TO TOWN AND AGHCA MOTION FOR LEAVE TO FILE
REPLY BRIEF**

Prevailing parties on appeal, Defendants¹ Counterclaimants Wampanoag Tribe of Gay Head (Aquinnah) and the Aquinnah Wampanoag Gaming Corporation (“AWGC”) (collectively “Defendants” or “Tribe”), hereby submit this response in opposition to the Motion for Leave to File Reply Memorandum in Support of the Town’s Motion for Entry of Final Judgment (Doc. 186), filed by Intervenor-Plaintiff/Counterclaim-Defendant the Town of Aquinnah (“Town”), together with Intervenor-Plaintiff/Counterclaim-Defendant, the Aquinnah/Gay Head Community Association, Inc. (“AGHCA”)².

The Tribe opposes the motion because it is simply an attempt to get in the last word in a pleading (Doc. 186-1) that is full of inaccurate and misleading statements to persuade this Court to err in the entry of the Town’s proposed form of final judgment. Such tactics do not amount to good cause for the requested relief.

Moreover, the Tribe informed the Town’s counsel that it cannot assent to the motion without being first able to review the text of the motion, and that any assent would be on the condition that the Tribe be able to file a sur-reply in opposition to the Town’s Motion for Entry of Final Judgment. *See* Declaration of Scott Crowell, filed simultaneously herewith, at Exhibit D; Exhibit D being a true and correct copy of the email exchange between Scott Crowell and the Town’s counsel. Although legal counsel for the Town committed to inform this Court of the Tribe’s position, *Id.*, it is nowhere mentioned in the Town’s pleadings.

Related to this motion, Plaintiff Commonwealth of Massachusetts and Third-Party Defendants Governor Charlie Baker, Attorney General Maura Healey, and Massachusetts

¹ The Wampanoag Tribal Council of Gay Head, Inc., which was named as a party defendant, was an entity created under the laws of the Commonwealth and no longer exists.

² The full caption in this matter should reflect that the name of Third Party Defendant Chairman of the Massachusetts Gaming Commission has changed to Cathy Judd Stein.

Gaming Commission Chairman Cathy Judd Stein (collectively referred to as “Commonwealth” or “State”) also seek leave to file their own limited reply pleading (Doc. 187). Filed simultaneously herewith is the Tribe’s opposition to the Commonwealth’s motion. The requested reply brief is the very first time in this litigation that the Commonwealth has weighed in on the Town’s Motion for Entry of Final Judgment.

The Tribe files its motion simultaneously herewith, in the event that this Court grants leave for the Town, the AGHCA and/or the Commonwealth to file their proposed reply briefs, to grant the Tribe leave to file a ten-page sur-reply. Such sur-reply is necessary to correct the inaccuracies and misstatements in the Town’s and the AGHCA’s proposed reply brief, and to clarify the Tribe’s position regarding the limited issues raised in the Commonwealth’s proposed reply.

For the reasons set forth herein, and the reasons set forth in the pleadings filed simultaneously herein, this Court should either deny all three motions for leave to file reply and sur-reply briefs, or grant all three motions for leave to file reply and sur-reply briefs. Moreover, the Tribe requests that the Town’s motion be scheduled for oral argument because of the importance to all parties of the wording and manner in which this Court spreads the Mandate issued by the First Circuit. *Massachusetts v. Wampanoag Tribe of Gay Head (Aquinnah)*, 853 F.3d 618 (1st Cir. 2017).

Dated: May 1, 2019

Respectfully Submitted,

s/ Scott Crowell
SCOTT CROWELL (*pro hac vice*)
CROWELL LAW OFFICE TRIBAL
ADVOCACY GROUP LLP
Sedona, Arizona, 86336
Telephone: (425) 802-5369
Fax: (509) 235-5017

scottcrowell@clotag.net

BRUCE SINGAL (BBO #464420)
ELIZABETH MCEVOY (BB) # 683191)
DONOGHUE, BARRETT & SINGAL
One Beacon Street, Suite 1320
Boston, MA 02108-3106
Telephone: (617) 720-5090
Fax: (617) 720-5092

LAEL R. ECHO-HAWK (*pro hac vice*)
MThirtySix, PLLC
The Yard
700 Pennsylvania Avenue, Second Floor
Washington, D.C. 20003
Telephone: (206) 271-0106
lael@mthirtysixllc.com

*Attorneys for Defendants/Counterclaim-
Plaintiffs*

CERTIFICATE OF SERVICE

I, Scott Crowell, hereby certify that I filed through the ECF System and therefore copies of the **WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH)'S RESPONSE IN OPPOSITION TO TOWN OF AQUINNAH'S AND AQUINNAH/GAY HEAD COMMUNITY ASSOCIATION'S MOTION FOR LEAVE TO FILE REPLY BRIEF** will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF). All non-registered CM/ECF participants will receive a copy of this filing via USPS.

Dated: May 1, 2019

s/ Scott Crowell
SCOTT CROWELL